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03 JUL 18 PM 12:50

July 18, 2003

RE: Docket N. NHTSA -2003-15428, - 4
Import Eligibility Petition for
Nonconforming 2003-2004 Micro Car
Company Smart Passion (Glass Top and
Convertible) Passenger Cars

VIA FEDEX and FACSIMILE

COLEMAN SACHS, CHIEF
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
U. W. DEPARTMENT OF TRANSPORTATION
IMPORT AND CERTIFICATION DIVISION
OFFICE OF VEHICLE SAFETY COMPLIANCE
400 SEVENTH STREET S.W.
NVS-223, ROOM 6111
WASHINGTON, D.C. 20590

FAX (202) 366-1024
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Dear Mr. Sachs;

Thomas Heidemann of Smart Automobile, Inc. Through its undersigned counsel, hereby submits its comments on the petition of J.K. Technologies LLC ("J.K.") in the above referenced docket for a decision that nonconforming 2003-2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars are eligible for importation. J.K. has failed to prove that the 2003-2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars are eligible for importation and sale in the United States.

We believe with respect to each Federal motor vehicle safety standard that would have applied to such vehicle had it been originally manufactured for importation into and sale in the United States, J.K. has failed to provide the required data, views, and arguments Per 49 C.F.R. section 593.6(b)(2)) demonstrating that the vehicle has safety features that comply with or are



VIA FEDEX and FACSIMILE

- 2 -

July 18, 2003

RE: Docket N. NHTSA -2003-15428, Import Eligibility Petition for Nonconforming 2003-2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars

capable of being modified to conform with such standards. J.K. has failed to show that after such modifications, the features will conform with respect to the standards mentioned below:

FMVSS 108 LAMPS, REFLECTIVE DEVICES AND ASSOCIATED EQUIPMENT

J.K. has stated in their petition that they would modify the headlamps and the marker light systems to meet this standard, however J.K. has not shown that after such modification, the features will conform with this standard, no tests or data has been provided.

FMVSS 206 DOOR LOCKS AND DOOR RETENTION COMPONENTS

J.K. has stated in their petition that based on observation of the system's operation that it meets this standard, however no tests or data were provided.

FMVSS 214 SIDE DOOR IMPACT

J.K. has stated in their petition that they would modify the A-Pillars, B-Pillars, and doors, and that with these modifications, the vehicle would meet this standard. However, J.K. has not provided any tests or data assuring compliance with this standard. We believe that this standard is extremely important to the safety of passengers and without any tests or data provided it cannot be concluded that J.K.'s modifications will comply.

FMVSS 301 FUEL SYSTEM INTEGRITY

J.K. has stated in their petition that the fuel spillage problems are controlled by the evaporative and ORVR systems, which have a rollover and check valve, incorporated in their design and have been proven in testing. However, J.K. has not conducted any tests or has shown any data that would assure compliance with this standard. In addition with respect to EPA requirements, the current ORVR system on the vehicle does not meet the requirements for EPA either.

In conclusion, we believe J.K. has not assured the compliance of FMVSS 108, 214, because they have not shown that after the stated modifications the features will conform with each standard by either providing tests or data. With respect to FMVSS 206, and 301 they have not assured compliance because they have not provided any tests or data to show that the vehicle has safety features that comply with the standards.



VIA FEDEX and FACIMILE

- 3 -

July 18, 2003

RE: Docket N. NHTSA -2003-15428, Import Eligibility Petition for Nonconforming 2003-2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars

Therefore, we believe that J.K. has failed to carry its burden of proof that the 2003-2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars are eligible for importation and sale in the United States, and we request that J.K.'s petition be denied.

Best regards,

A handwritten signature in black ink, appearing to read 'Evan L. Ginsburg', is written over the typed name. The signature is fluid and cursive, with a long, sweeping tail that extends to the right and then down.

EVAN L. GINSBURG

Cc: Client